NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

VIA ELECTRONIC DELIVERY

August 5, 2008

Chairman Kevin Martin
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Deborah Tate
Commissioner Robert McDowell
Federal Communications Commission (via e-mail)

Re: Ex Parte Communication, WC Dockets Nos. 06-122 and 05-337 and CC Docket No. 96-45

Dear Chairman Martin and Commissioners:

In a recent series of filings, BT Americas ("BT")[1] has attacked the current revenue-based Universal Service Fund ("USF") contribution mechanism used by the Federal Communications Commission ("FCC" or "Commission"), and touted the benefits of a change to a numbers-based contribution mechanism.[2] Given the consistent opposition of the National Association of State Utility Consumer Advocates ("NASUCA") to such proposals,[3] on behalf of telephone consumers nationwide, we respond here to some of the arguments made by BT.

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[1] BT describes itself as "one of the leading providers of global corporate information technology services…." BT filing (June 26, 2008) at 1, n.1. Unless otherwise indicated, all references herein are to filings in WC Docket Nos. 06-122 and 05-337 and CC Docket No. 96-45.

[2] See generally id.; see also BT ex partes (July 10 and July 23, 2008). The June 26, 2008 BT filing is intended to be a response to the Commission's May 2, 2008 invitation to parties to refresh the record on this and related proceedings. BT describes the May 2, 2008 invitation as a Public Notice; it was actually a press release.

[3] See, e.g., NASUCA Comments to Refresh the Record (July 7, 2008) at 21-24; NASUCA ex parte (January 11, 2008) (attaching NASUCA resolution opposing numbers-based mechanism); NASUCA ex parte (September 25, 2007).

BT asserts that the current revenues-based mechanism "has become increasingly unwieldy, unfair and economically inefficient"[4] and that "the revenues-based assessment system harms the very consumers that the USF system is supposed to benefit, because it inefficiently represses both supply and demand for telecommunications services."[5] With regard to the latter statement, NASUCA's ex parte filed on January 11, 2008 comprehensively addressed the errors in the claims that the current mechanism represses telecommunications usage.[6]

More importantly, with regard to both statements, whatever the problems with the current assessment mechanism, BT utterly fails to show that a numbers-based mechanism would be any less unwieldy, less unfair or less economically inefficient. We will examine each of BT's subsequent allegations in that light.[7]

- "The existing revenue-based assessment mechanism is unwieldy and ultimately unsustainable."[8]

BT proclaims at length the difficulties of separating "assessable" from "non-assessable" revenues and services.[9] The Commission has already effectively dealt with many of these issues through the adoption of "safe harbor" percentages, which allow carriers -- even those with higher levels of interstate and international revenues (or assessable versus non-assessable revenues) to pay based on a predetermined percentage. Further, as demonstrated by NASUCA and never challenged by any party, the revenue-based mechanism is as robust, if not more so, than a numbers- or connections-based mechanism under conditions of substantial increases to funding levels. And the level of revenues being assessed under the mechanism has been remarkably stable over the last few years, as shown on the attached charts. Further, the Commission took a major step to stabilizing the fund when, in May of this year, it capped payments to competitive eligible telecommunications carriers.[10]

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[4] BT filing (June 26, 2008) at 1.

[5] Id. at 1-2.

[6] NASUCA ex parte (January 11, 2008) at 3-4.

[7] The order of the presentation of these issues here differs slightly from that in BT's filing.

[8] BT filing (June 26, 2008) at 2.

[9] Id.

[10] FCC 08-122 (rel. May 1, 2008).

- "The existing revenue-based assessment system causes inequities among competing service providers and creates opportunities and incentives for arbitrage and abuse."[11]

The notion that a numbers-based system would be entirely competitively neutral and create no opportunities for arbitrage is a pipe dream. This would be true even if all numbers were assessed absolutely equally; but that appears highly unlikely. As NASUCA outlined earlier,[12] the requests for special treatment under a numbers-based mechanism are legion. There are:

> CTIA's efforts to win special treatment for certain wireless numbers in a numbers-based mechanism;[13] likewise, TracFone's similar requests on behalf of its wireless customers;[14] Virgin Mobile's similar requests for its customers;[15] Sage Telecom's on behalf of "personalized ring and 8YY toll-free";[16] United Online Inc.'s on behalf of its services;[17] Community Voice Mail and GrandCentral Ventures, Inc. for their free services;[18] USA Mobility's on behalf of paging companies;[19] OnStar Corporation's and Mercedes-Benz USA, LLC's on behalf of the "core telematics" service used in automobiles;[20] ACUTA and Educause on behalf of colleges and universities generally;[21] State University of New York at Albany on behalf of university PBXs;[22] and Hughes' efforts to subdivide broadband capacity in a connections-based mechanism.[23] Likewise, the Intercarrier Compensation Forum's proposal contains wide latitude for arbitrage.[24]

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[11] BT filing (June 26, 2008) at 2.

[12] NASUCA ex parte (June 29, 2006) at 4.

[13] CTIA ex parte (April 26, 2006).

[14] TracFone ex parte (May 2, 2006) at 1-2.

[15] Virgin Mobile ex parte (June 9, 2006).

[16] Sage Telecom ex parte (June 27, 2006).

[17] United Online Inc. ex parte (April 26, 2006).

[18] Community Voice Mail ex parte (May 30, 2006); GrandCentral Ventures, Inc. ex parte (April 11, 2006).

[19] USA Mobility, Inc. ex parte (June 8, 2006).

[20] OnStar Corporation ex parte (June 14, 2006) at 1-2; Mercedes-Benz USA, LLC ex parte (April 12, 2006).

[21] ACUTA/Educause ex parte (May 31, 2006) and attached white paper; see also Central Florida Community College ex parte (June 26, 2006).

[22] State University of New York at Albany ex parte (May 24, 2006).

[23] Hughes ex parte (May 17, 2006).

[24] Intercarrier Compensation Forum ex parte (November 22, 2005) at 3-4.

Further examples of requests for special treatment were provided in NASUCA's September 25, 2007 ex parte (at 6-8).

Even BT itself apparently believes that the numbers of "business" customers (however that is defined) could be charged differently from (at twice the rate charged) residential customers (however that is defined).[25] Some of these requests for special treatment may well be meritorious, but that merely emphasizes the uneven treatment that would be given to numbers, and the opportunities for arbitrage that would be created.

- "<u>The lack of clarity in the rules causes unnecessary disputes between service providers and customers</u>."[26]

BT complains that "[t]he USF assessment rules are unclear and subject to constant revision…."[27] It is unfortunately true that rules change and are subject to dispute. And the process for making those changes may involve "no notice or opportunity for comment," as BT alleges.[28] But there is no reason to believe that rules implementing a numbers- or connections-based mechanism would be any more fixed or would be subject to fewer disputes.

- "<u>The revenue-based assessment system also imposes extraordinarily burdensome record-keeping and compliance obligations on telecommunications providers</u>."[29]

BT asserts that "[a]t least six of BT's staff are dedicated full-time or part-time to US universal service and 499 matters."[30] If six employees were dedicated full-time, that would mean that BT spent 12,480 person-hours each year,[31] or more than 200 times the FCC's estimates for the USF form and the Telephone Relay Service form. But, as BT states, some of those employees are dedicated part-time; the employees work both on the forms and other universal service matters; and BT refers to both USF and TRS. Thus it is impossible to use BT's data to reach the conclusion that "[t]he cost of compliance with just **this one item** of US telecommunications regulation is massive."[32]

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[25] BT ex parte (July 10, 2008) (assuming a $0.75 assessment on residential customers and a $1.50 assessment on business customers).

[26] BT filing (June 26, 2008) at 2.

[27] Id.

[28] Id. at 2-3.

[29] Id. at 2.

[30] Id.

[31] I.e., 6 * 2080 = 12,480.

[32] Id. (emphasis added).

- "[T]he revenues-based mechanism is profoundly inefficient and harms the United States' economic competitiveness in the global marketplace."[33]

It appears that BT's real complaint here is with the level of the United States' USF, not with the collection mechanism. The simplistic fact that other countries have USF assessments of 1% or 5%[34] does not recognize the depth and breadth of our Nation's universal service commitment. That said, NASUCA has been a long-time supporter of efforts to limit the amounts collected through the USF -- especially the "high-cost" portion of the fund -- in order to ensure that those dollars are used only for the purposes set out in statute.

- Finally, "[r]evenue-based assessments have an inordinate impact on providers and consumers of high-end corporate data communications data services and VPNs."[35]

Here we have the real meat of BT's complaint. Apparently, BT believes that it and its "global"[36] customers would pay less under a numbers-based regime than they do under the revenue-based mechanism. Yet BT's real issue is not the mechanism, but with the Commission's determination in 1997 that international revenues should be included in the revenue base.[37] Likewise, it may be that a "substantially higher proportion of high-capacity data telecommunications is jurisdictionally interstate" compared to other telecommunications offerings.[38] There, however, BT's complaint is against Congress, which required all carriers that provide interstate services to contribute. 47 U.S.C. § 254(d). In fact, *TOPUC* found that the statute did not give the FCC the ability to assess intrastate revenues to support the USF.[39] To the extent that international carriers use fewer numbers in the US, or high-capacity data carriers also use fewer numbers, they would contribute less under a numbers-based mechanism.

In its July 10, 2008 ex parte, BT asserts "that a telephone numbers-based proposal would not unfairly advantage corporate customers."[40] BT attempts to demonstrate this by showing that, based on the currently-assigned telephone numbers, a $0.75 assessment on residential numbers and a $1.50 assessment on business numbers "would more than

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[33] Id. at 3.

[34] Id.

[35] Id.

[36] Id.

[37] See First Report and Order, 12 FCC Rcd 8776 (1997), ¶ 779. That aspect of the FCC's ruling was reversed and remanded because it would require a carrier whose international revenues far outweighed its interstate revenues to be assessed on the total, see *Texas Office of Public Util. Counsel v. FCC*, 183 F.3d 399, 433-436 (5th Cir. 1999) ("*TOPUC*"), but the FCC's subsequent determination that carriers with interstate revenues less than 12% of the total would be exempt is still in effect. 47 C.F.R. § 54.706(c).

[38] BT filing (June 26, 2008) at 3.

[39] See 183 F.3d at 446-449.

[40] BT ex parte (July 10, 2006) at 1.

support the annual $6 billion annual [sic] USF funding requirement."[41] As noted above, this assumes that business numbers would pay more per number than residential numbers, a proposal that has not, as best as can be determined, been made so far in this record.[42] And it also assumes that all business numbers will be assessed equally (and that all residential numbers will also, albeit separately, be assessed equally). To the extent this does not occur, and some numbers receive no or a lesser assessment, that will of course increase the burden on other customers.

As NASUCA stated in its September 25, 2007 ex parte in response to an earlier ex parte from IDT Telecom ("IDT"), which, like BT, would likely benefit from the imposition of a numbers-based mechanism:

> In conclusion, it should be clear that the proponents of switching to a numbers-based mechanism should bear the burden of demonstrating that the change is necessary, and that the change will benefit (or at least not harm) consumers. IDT's attempts to do so cannot carry the day. It has not been shown that a numbers-based mechanism is more competitively and technology neutral than the current system. NASUCA urges the Commission to require more before making this substantial change to the USF contribution mechanism.[43]

BT's filings, like IDT's, have not really advanced the cause.[44]

Respectfully submitted,

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[41] Id. at 2.

[42] BT also asserts that, under its proposed assessment structure, "the USF burden on a low-income consumer … might be lower under a telephone numbers-based proposal." Id. This would, of course be entirely dependent on the structure and the amount assessed under that structure.

[43] NASUCA September 25, 2007 ex parte, at 12.

[44] Likewise, general statements like those in ex partes from Cox (July 15 and 16, 2008) in 06-122 and other dockets that "a numbers-based contribution methodology … would help ensure that the universal service funding mechanism is non-discriminatory and sustainable" are simply unconvincing.

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USF Contribution Fund

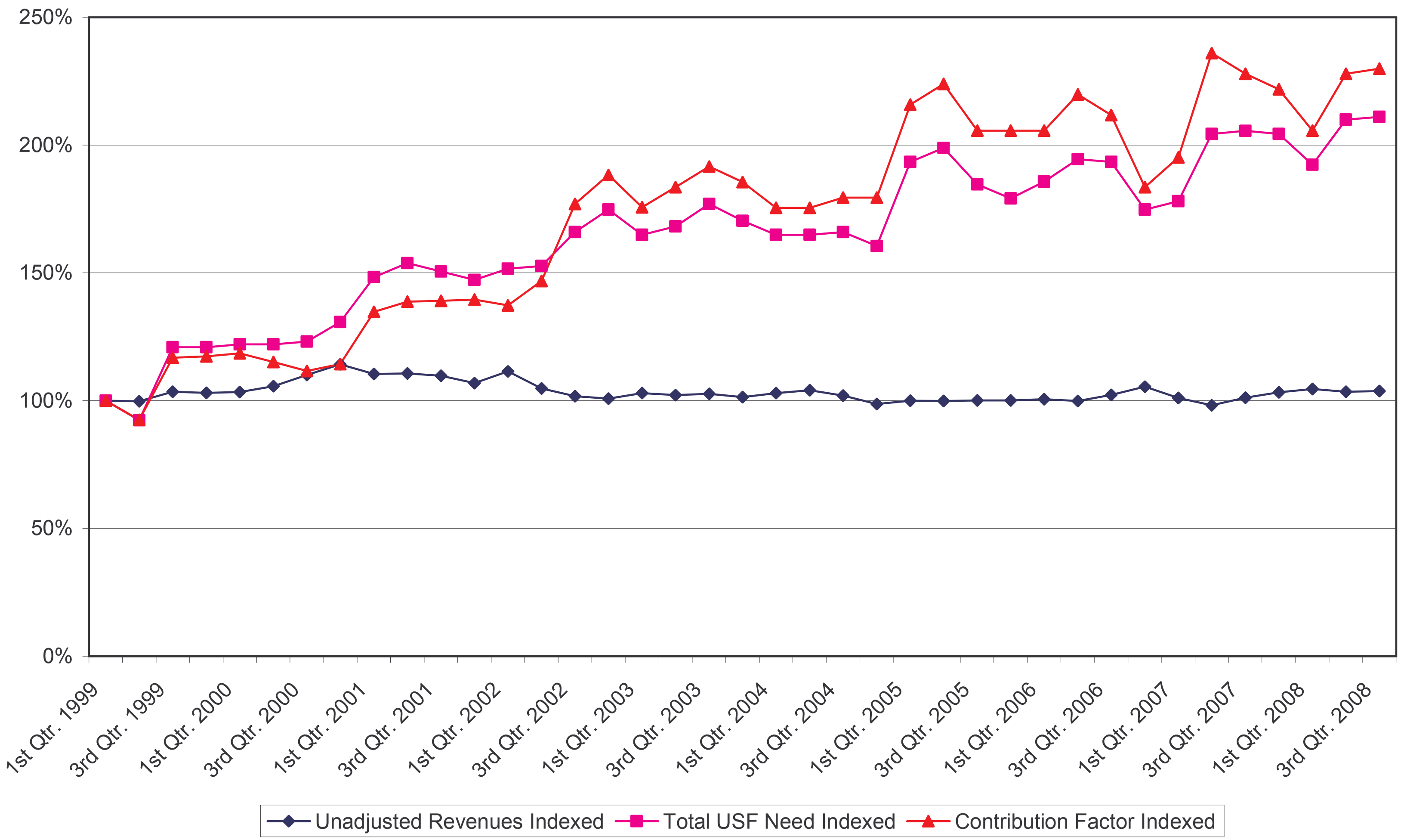
	Unadjusted Revenues	Adjusted Revenues	Total USF Need	Contribution Factor	
1st Qtr. 1999	18.35	18.35	0.91	0.050	
2nd Qtr. 1999	18.31	18.31	0.84	0.046	
3rd Qtr. 1999	18.99	18.99	1.10	0.058	
4th Qtr. 1999	18.91	18.91	1.10	0.058	
1st Qtr. 2000	18.96	18.96	1.11	0.059	
2nd Qtr. 2000	19.38	19.38	1.11	0.057	
3rd Qtr. 2000	20.20	20.20	1.12	0.055	
4th Qtr. 2000	20.96	20.96	1.19	0.057	
1st Qtr. 2001	20.26	20.26	1.35	0.067	
2nd Qtr. 2001	20.30	20.30	1.40	0.069	(a)
3rd Qtr. 2001	20.14	19.94	1.37	0.069	
4th Qtr. 2001	19.60	19.40	1.34	0.069	
1st Qtr. 2002	20.45	20.26	1.38	0.068	
2nd Qtr. 2002	19.22	19.03	1.39	0.073	
3rd Qtr. 2002	18.68	17.16	1.51	0.088	(b)
4th Qtr. 2002	18.49	16.99	1.59	0.093	(b)
1st Qtr. 2003	18.89	17.22	1.50	0.087	(b)
2nd Qtr. 2003	18.74	17.04	1.53	0.091	(c)
3rd Qtr. 2003	18.84	17.07	1.61	0.095	
4th Qtr. 2003	18.61	16.89	1.55	0.092	
1st Qtr. 2004	18.89	17.22	1.50	0.087	
2nd Qtr. 2004	19.10	17.42	1.50	0.087	
3rd Qtr. 2004	18.71	17.02	1.51	0.089	
4th Qtr. 2004	18.10	16.47	1.46	0.089	
1st Qtr. 2005	18.35	16.43	1.76	0.107	
2nd Qtr. 2005	18.33	16.36	1.81	0.111	
3rd Qtr. 2005	18.37	16.52	1.68	0.102	
4th Qtr. 2005	18.36	16.07	1.63	0.102	(d)
1st Qtr. 2006	18.45	16.59	1.69	0.102	
2nd Qtr. 2006	18.32	16.38	1.77	0.109	
3rd Qtr. 2006	18.77	16.84	1.76	0.105	
4th Qtr. 2006	19.36	17.60	1.59	0.091	
1st Qtr. 2007	18.55	16.76	1.62	0.097	
2nd Qtr. 2007	18.01	16.00	1.86	0.117	
3rd Qtr. 2007	18.57	16.53	1.87	0.113	
4th Qtr. 2007	18.95	16.92	1.86	0.110	
1st Qtr. 2008	19.19	17.27	1.75	0.102	
2nd Qtr 2008	18.98	16.90	1.91	0.113	
3rd Qtr 2008	19.04	16.95	1.92	0.114	

Source: Contribution Factor Public Notices.

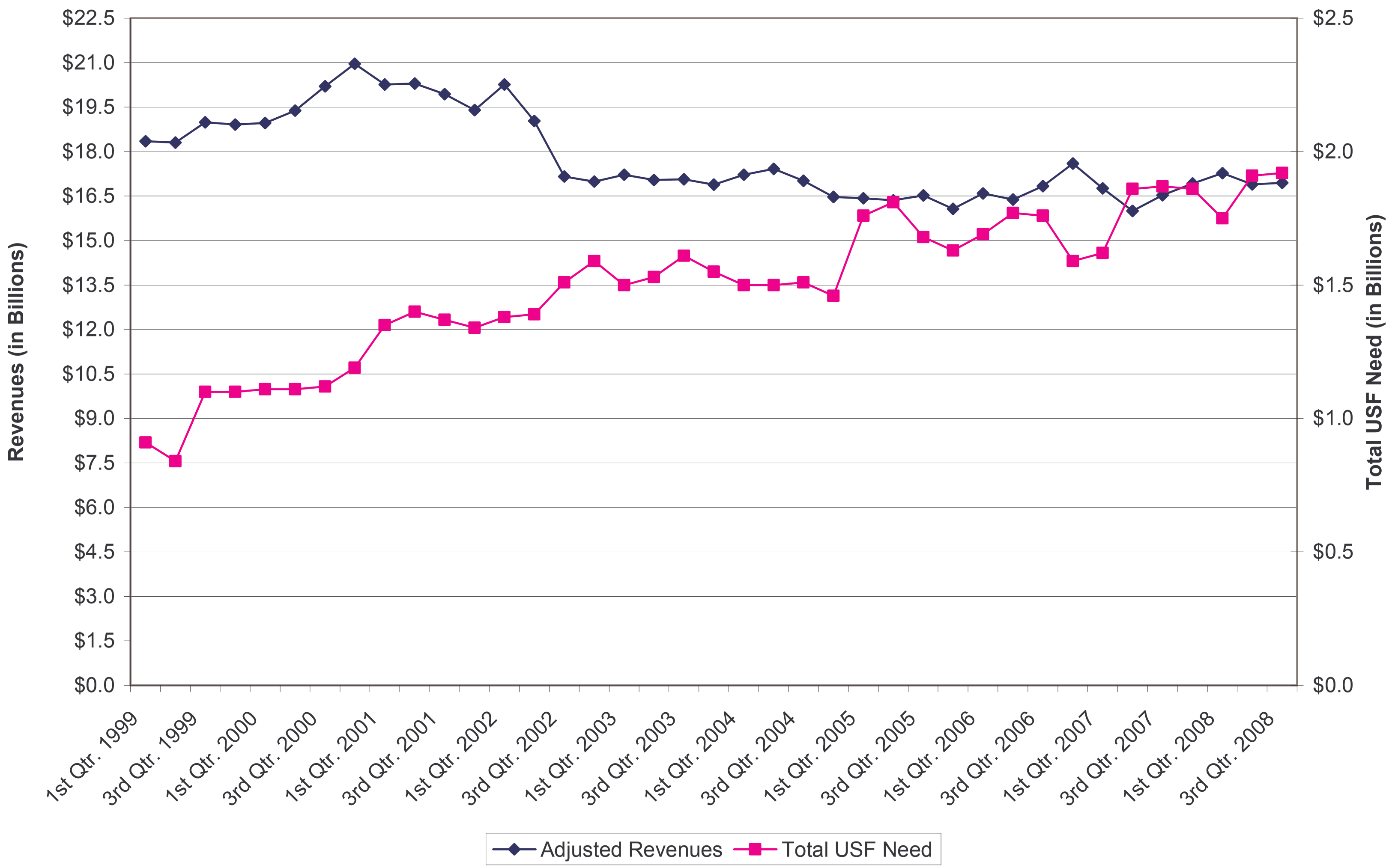
Notes:
(a) Prior to 2Q01, the quarterly numbers were calculated using a 6-month base, so there is no comparable figure for unadjusted revenues.
(b) For 3Q02, 4Q02 and 1Q03, the FCC adjusted the contribution factor. The factor shown here is the unadjusted (calculated) factor.

(c) Beginning 2Q03, a circularity factor was applied that increased the adjustment.
(d) For 4Q05, because of the impact of Hurricane Katrina, the FCC adjusted the contribution base to $17.87 billion to maintain the contribution factor at 10.2%.

Universal Service Fund
Indexed at 1Q99



Revenues and USF Needs (two scales)



Universal Service Fund
Contribution Factor